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November 29, 1993

Mr. William F. Caton
Assistant Secretary
Federal Communications Commission
1919 M. Street, N.W.
Washington, D.C. 20554

Re: PP Docket No. 93-253

Dear Mr. Caton:

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Enclosed for filing is an original and four (4) copies of Citizens Utilities Reply Comments of Citizens Utilities Company in the above proceeding.

Please return a stamped-in copy in the self-addressed postage paid envelope provided.

Very truly yours,

Elle S. Dets d

Ellen S. Deutsch Senior Counsel

ESD:ljg Enclosures

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# PEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

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In the Matter of
Implementation of Section 309(j)
of the Communications Act

PP Docket No. 93-253

To: the Commission

Competitive Bidding

#### REPLY COMMENTS OF CITIZENS UTILITIES COMPANY

Citizens Utilities Company ("Citizens"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. 1.415, hereby submits its Reply Comments in the above-captioned Notice of Proposed Rule Making ("NPRM") regarding use of competitive bidding to award radio licenses. 1

#### I. RURAL TELCO DEFINITION SHOULD FOCUS ON COMMUNITIES SERVED.

Numerous parties that filed comments in this proceeding opposed the Commission's proposed definition of "rural telco" as unworkable and contrary to the intent of Congress. See, e.g., Comments of Small Telephone Companies of Louisiana ("Louisiana Telcos"), Alliance of Rural Area Telephone and Cellular Service Providers ("Rural Alliance"), Organization for the Protection and Advancement of Small Telephone Companies ("OPASTCO"), and United States Telephone Association ("USTA"). Parties have proposed

Notice of Proposed Rule Making, FCC 93-455, PP Docket No. 93-253, released October 12, 1993.

various alternatives for determining eligibility for "rural telco" preferences in competitive bidding. Although the precise definitions vary, the comments reveal widespread agreement that "rural telco" preferences should be afforded to telcos whose primary business is the provision of local exchange service in rural and small communities.

# A. Telco-Cable Cross-Ownership Definition

Virtually all parties that addressed the issue agreed that the definition of a carrier that is exempt from the telco-cable crossownership rules is inappropriate for defining "rural telco" for Several parties supported purposes of competitive bidding. revising the telco-cable definition by increasing the population of the service area from 2,500 to 10,000. Citizens supports increasing the population of rural service area to 10,000 but does not favor use of this definition to determine "rural telco" eligibility for competitive bidding, even if it is revised. telco-cable definition does not ensure that competitive bidding preferences would be afforded to telcos that serve rural and small communities. As many parties pointed out, a LEC would need to have only a single community of 10,000 or less in its service area to be considered a "rural telco" under this definition. The goal of providing preferential procedures to telcos that serve primarily rural and small communities would be undermined.

### B. Total Number of Access Lines

Several parties have suggested definitions of "rural telco" that focus on a LEC's total number of access lines. Louisiana Telcos and U.S. Intelco Networks, Inc., for example, proposed using the definition of "small telephone company" in Section 61.39 of the Commission's Rules, which applies to telcos that serve fewer than 50,000 access lines. OPASTCO proposes that a LEC should qualify for "rural telco" eligibility if it provides telephone exchange service by wire to less than 10,000 access lines. The Joint Comments of Rocky Mountain Telecommunications Association and Western Rural Telephone Association ("Joint Comments") suggested a 20,000 access line threshold.

citizens opposes any definition that permits a LEC to be considered a "rural telco" solely on the basis of its total number of access lines served throughout the country. The legislative history and policy underlying the "rural telco" preference indicates that the type of community served by a LEC, not its total number of access lines, is the relevant factor in determining "rural telco" eligibility. A definition based on a total of, for example, 20,000 access lines would preclude "rural telco" eligibility for a LEC that serves more than 20,000 access lines even if that service is provided primarily in several different rural and small communities. Likewise, any LEC that serves less than 20,000 access lines would qualify as a "rural telco" even if that service was provided in a suburban or urban area. Thus, the definition would fail to identify the LECs Congress had in mind for

preferential treatment -- LECs that serve primarily rural and small communities. The Commission should not confuse the definition of "rural telco" by attempting to incorporate policy concerns related to small businesses. The statute authorizing competitive bidding establishes "small businesses" as a separate category of entities designated for preferential treatment in spectrum auctions. A LEC's total number of access lines would be relevant to whether it is a small business, but it is not relevant to whether it serves a rural community. Thus, it is inappropriate and contrary to the intent of Congress to make a LEC's size a determinant of "rural telco" eligibility. Moreover, as suggested in the Comments of GTE, a LEC's relationship to a parent or holding company should not affect its "rural telco" eligibility as long as the LEC serves primarily rural and small communities.

## C. Percentage of Population Served

Citizens believes that the Commission should formulate, for purposes of awarding PCS licenses, a definition of "rural telco" that is tied to the PCS service area for which it seeks a license. As Citizens suggested in its comments, to be a "rural telco," a LEC must serve at least one community of 2,500 (or 10,000) or less that is within the MTA or BTA and serve no more than some specified percentage (i.e., 10 percent) of the total population within the MTA or BTA. The first prong of this definition would ensure that only LECs that actually serve rural or small communities would qualify as "rural telcos." The second prong of the definition

would ensure that LECs serving the major urban population centers in a MTA or BTA would not qualify as a "rural telco."

Further, this two-pronged definition is more flexible than those that would require a LEC to not serve an urban area or a single community with a population of more than 10,000. See, e.g. Rural Alliance, OPASTCO and National of Telecommunications Association ("NRTA"). Under these definitions, a LEC with a service area that minimally extends into an urban area or a community of more than 10,000 automatically would be excluded from "rural telco" eligibility. Other parties recognized that this result would be unfair and contrary to the policy underlying the rural telco preference. See, e.g. Comments of Chickasaw Telephone Company ("Chickasaw") and Joint Comments. Chickasaw stated that a "rural telco" should include any telco "predominately" serving rural areas even if its certified area "incidentally" includes a part of a community of 10,000 or more of an urbanized area. Comments of Chickasaw at 3. The Joint Comments suggested that "de minimis" extension into an urban area should not affect a LEC's eligibility for rural telco status. Joint Comments at 20. Citizens believes that, rather than engaging in protracted decisions turning on the definition of "incidental" or minimis," it should establish a bright-line test based on the percentage of the population a LEC serves in the MTA or BTA for which it seeks a license.

# II. BETRS LICENSES SHOULD NOT BE SUBJECT TO COMPETITIVE BIDDING.

Citizens strongly urges the Commission to withdraw its proposal to award BETRS licenses through competitive bidding. As Citizens discussed in its Comments, the BETRS service does not meet the criteria in the new statute that determine when a service should be subject to competitive bidding. See Comments of Citizens at 7-11. Other parties expressed a similar view. See, e.g., Comments of USTA, OPASTCO, NRTA and Joint Comments. The comments fail to provide a record upon which the Commission could conclude that subjecting BETRS licenses to competitive bidding is in the public interest.

Respectfully submitted,

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November 30, 1993